

COSCON/HSD SLOT CHARTER AGREEMENT

Asia – U.S. East Coast

FMC Agreement No. 012329-002

Second Edition

Original Effective Date: April 30, 2015

Expiration Date: In accordance with Article 7 hereof

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WHEREAS: COSCON (defined below) operates a general container service known as the “Pendulum Service,” as described in Article 8 of this Agreement, utilizing space on vessels operated by COSCON, CMA CGM S.A. (“CMA CGM”) and United Arab Shipping Company (S.A.G.) (“UASC”) pursuant to FMC Agreement 012299; and

WHEREAS: COSCON wishes to sell and HSD wishes to purchase space on the Pendulum Service.

NOW THEREFORE: in consideration of the premises and the mutual covenants herein contained, the Parties hereto agree as follows:

1. Parties

The Parties to this Agreement are:

(1) COSCO Container Lines Company, Limited
378, Da Ming Road (East)
Shanghai, The People’s Republic of China

Referred to as “COSCON”

and

(2) Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG
Willy-Brandt-Strasse 59-61
20547 Hamburg, Germany

Referred to as “HSD”.

2. Definitions

“Agreement” means this COSCON/HSD Slot Charter Agreement

“Party” or “Parties” means either COSCON or HSD individually or collectively.

“Container(s)” means any ISO standard container(s) with a maximum height of 9’6” including any reefer and/or other special containers, provided they meet ISO standards.

“Vessel(s)” means a purpose built containership maintained by COSCON or on which COSCON controls space in the Pendulum Service.

“Slot(s)” means the space occupied by 1 x 20’ x 8’ x 8’6” or 1 x 20’ x 8’ x 9’6” ISO container for the predetermined maximum average gross weight.

3. Undertaking and Purpose

Subject to the terms and conditions hereinafter set forth, COSCON shall sell and HSD shall purchase Slots on a used or unused basis on Vessels operated in the geographic scope defined in Article 4 hereof for the carriage of Containers of the volume and on the terms hereinafter further defined (the “Slot Charter”). This Agreement shall further serve to authorize the Parties to enter into further agreements as provided under Article 16 herein.

Each Party undertakes to meet its commitment and pay any and all amounts as hereunder described.

4. Scope of the Agreement

This Agreement covers the trade between (i) the ports in China (including Hong Kong), Korea, Malaysia, Vietnam and Canada and the inland and coastal points served via such ports on the one hand, and (ii) the ports in the U.S. East Coast, and the inland and coastal points served via such ports on the other hand (the “Trade”).

There shall be no geographic restrictions on the origin or destination of cargo carried on the Vessels employed in the services described in Article 8 of this Agreement. In other words, such cargo may originate from or be destined for ports or points outside the geographic scope of this Agreement.

The inclusion of non-U.S. trades in this Agreement shall not bring such non-U.S. trades under the jurisdiction of the U.S. Federal Maritime Commission or entitle the Parties hereto to immunity from the U.S. antitrust laws with respect to such non-U.S. trades.

5. Containers and Cargo

HSD will be allowed to ship only dry-cargo Containers, reefers and empty Containers meeting the definition in Article 2 hereof. Loaded containers shall be in a seaworthy condition, containing lawful merchandise of any kind, including IMO cargo, properly packed and secured. Containers not meeting the above criteria may be refused for carriage. Notwithstanding the above, explosives and radioactive material shall not be accepted by COSCON.

The Parties are authorized to discuss and agree on rules relating to the acceptance of dangerous, break bulk and out-of-gauge cargoes.

6. Schedules

COSCON shall be entitled to modify the structure of its service at any time, at its sole discretion, by giving HSD notice of such modification in accordance with this Agreement.

However, should COSCON structurally modify its service and HSD is of the opinion that such modification is or may be materially detrimental to its own performance on the service, the Parties shall review the terms of this Agreement.

7. Duration and Termination

This Agreement shall commence on the date this Agreement becomes effective under the Shipping Act of 1984, as amended and FMC regulations issued pursuant thereto,”), and shall remain in force until March 31, 2017.

If upon the date this Agreement would otherwise terminate, any roundtrip voyages commenced prior to such termination date have not been completed, this Agreement shall (unless otherwise agreed), be automatically extended for such time as required to complete such roundtrip voyages.

Notwithstanding the above, this Agreement:

- a) may be terminated at any time by a non-breaching Party in case of breach by any Party of any fundamental term of this Agreement; and
- b) may be terminated at any time upon mutual written agreement of the Parties.

In the event of termination for any reason whatsoever, all debts, obligations and liabilities that have accrued during the currency of this Agreement shall survive and they will be resolved according to the provisions and procedures contained within this Agreement.

8. Slot Commitment

COSCON shall provide to HSD from its Pendulum Service’s ‘allocation 250 TEUs at 10 gwt average or 2500 tons and 12 reefer plugs per round-trip weekly sailing between the ports in the Trade on a used or not used basis,

And

HSD shall purchase such Slots on a used or not used basis on such terms and conditions and at such price as the Parties may from time-to-time agree.

The Parties may agree to increase or decrease the number of slots and/or the number of reefer plugs by up to 100 percent without the need to file an amendment with the FMC.

The Pendulum Service shall initially consist of a 119-day round trip voyage, calling on a fixed day and weekly basis in such ports within the trade. Initially, the port rotation shall be:

Ningbo – Shanghai – Hong Kong – Yantian – Vung Tau – Port Kelang – Suez Canal --
Halifax – New York – Norfolk – Savannah – Charleston – Suez Canal – Port Kelang –
Vung Tau – Hong Kong – Yantian - Shanghai – Ningbo – Pusan – *Seattle – *Vancouver
– Shanghai -- Ningbo

*Parties agree only the Far East to USEC section of the Pendulum Service for Slot purchasing in this Agreement. HSD will not purchase slots on voyages from/to Seattle and Vancouver under this Agreement.

Any change of the foregoing rotation shall not require further amendment of this Agreement or any filing with the FMC, provided such change is within the geographic scope of the Trade. The Parties are authorized to discuss and agree on the ports to be called, port rotation, and scheduling of the service to be provided hereunder; provided, that COSCON will make the final decision with respect thereto. Additional ports of call may be added on an *ad hoc* basis at the discretion of COSCON, if such port call does not affect the time for loading and discharge in regular ports, schedule integrity, service frequency and normal transit time, and remains within the geographic scope of the Trade.

Any 40' HC shall be counted as 2 TEUs.

Any 45' HC shall be counted as 2.5 TEUs.

COSCON is authorized to sell and HSD to purchase slots in the Trade in addition to those set forth above from time to time, on such terms as the Parties may agree and subject to space availability, without further amendment of this Agreement or any filing with the FMC.

9. Slot Costs

The Parties are authorized to discuss and agree upon the amounts COSCON shall charge HSD for the carriage of loaded and empty Containers hereunder, and may adjust said amounts as they may agree from time to time. The Parties are further authorized to discuss and agree upon the terms of payment for the vessel space provided in accordance with this Agreement.

10. Force Majeure

Where the performance of a Party in whole or in part is prevented by circumstances beyond that Party's reasonable control, such as war or warlike activities, civil commotion, riots, invasion, rebellion, hostilities, governmental and/or national regulations, boycott against one flag or a political ban against any party, strikes, restraints of Princes and Rulers or any other cause of a like nature, this Agreement shall not thereby

be terminated, but the obligations of both Parties hereunder shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension. The Parties will, as far as possible, advise each other within 48 hours of such new circumstances and adopt the terms of this Agreement to the changed circumstances as far as possible.

11. Applicable Law and Arbitration

This Agreement shall be governed by and interpreted in accordance with the Laws of England for the time being in force except that nothing shall relieve the Parties of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

Any dispute or difference arising out of or in connection with this Agreement which cannot be resolved amicably shall be referred to the exclusive jurisdiction of the High Court of Justice in London. However any dispute relating to loss or damage to cargo or container carried under either Party's bill of lading shall be referred to the jurisdiction mentioned in the bill of lading of this Party.

Either Party may at any time call for mediation of a dispute under the auspices of the London Maritime Arbitrators Association. Unless agreed such mediation shall not otherwise interfere with or affect anything else including the time bars and Court procedure. If a Party calls for mediation and such is refused, the Party calling for mediation shall be entitled to bring that refusal to the attention of the Court.

The Parties shall keep confidential all awards made, together with all materials in the proceedings created for the purpose of the mediation, and all other documents produced by another Party in the proceedings not otherwise in the public domain – save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a court or other competent judicial authority.

12. Third Parties

HSD shall not be entitled to sublet slots obtained from COSCON under this Agreement to any third party ocean common carriers without prior written consent from COSCON.

Notwithstanding the afore-mentioned, HSD may, without prior written consent of the COSCON, sub-charter space to its affiliates (being a company that controls, is controlled by, or is under common control with HSD) that are ocean common carriers within the meaning of the U.S. Shipping Act from time to time. Any affiliate or subsidiary of HSD receiving space hereunder may not sub-charter that space to any other third-party ocean common carrier without the prior written consent of the COSCON.

HSD shall remain fully responsible and liable to COSCON for the due performance and fulfillment of this Agreement by persons to whom it sub-charters any slots.

13. Notices

All legal process, notices or other formal communications required by or in connection with this Agreement shall be in writing and shall be deemed given when (a) delivered by hand, (b) transmitted by electronic mail, or (c) delivered, if sent by Express Mail, Federal Express or other express delivery service, or registered or certified mail, return receipt requested, to the addressee at the following addresses (or to such other addresses as a party may specify by notice given to the other party pursuant to this provision):

To COSCON:

COSCO Container Lines Company, Limited
378, Da Ming Road (East)
Shanghai, P.R. China
Attn: Irene Cheng

Tel: +86 21 3512 4888 - 2976
Fax: +86 21 6596 3985
E-mail: chengjin@coscon.com

To HSD:

Willy-Brandt-Straße 59-61
20547 Hamburg
Germany
Attn: Philipp Arning
E-mail: philipp.arning@hamburgsud.com

14. Non-Assignment

Neither Party shall assign its rights or delegate its duties under this Agreement to any other person or entity without the prior written consent of the other Party. Notwithstanding the above, each of the Parties may on written notice to the other Party assign its rights or delegate its duties under this Agreement to a fully-owned subsidiary that is an Ocean Common Carrier within the meaning of the Shipping Act; provided that in the event of such an assignment, the assigning Party shall remain responsible for the due and punctual performance of this Agreement by such subsidiary.

15. Amendment and Embodiment

This Agreement may not be amended, modified or rescinded except in writing and duly signed by authorized signatories of the Parties, and any amendment, addendum or appendix so signed shall constitute a part of this Agreement. Any amendment or modification to this Agreement shall be filed with the FMC and become effective under the Shipping Act of 1984 prior to being implemented.

16. Further Agreements

The Parties are authorized to enter into further agreements with respect to routine operational, technical and administrative matters to the extent necessary or desirable to implement the general provisions contained in this Agreement (including, but not limited to, that set forth in Article 8 and 9 hereof) without further amendment to this Agreement. Any further agreement contemplated by this Agreement, except to the extent such further agreement relates to routine operational, technical and administrative matters, shall be filed with the FMC and become effective under the Shipping Act of 1984 prior to being implemented.

17. Compliance with laws

The Parties shall at all times be compliant with mandatory applicable U.S. federal and state laws and regulations in force during the course of this Agreement. Any consequence to this Agreement resulting from the non-compliance of a Party with such law and regulations will be borne in full by that Party.

18. Agreement Officials and Delegations of Authority

The following persons are authorized to execute and file this Agreement, and any accompanying materials and any subsequent modifications to this Agreement, with the Federal Maritime Commission:


- (i) Any authorized officer of a Party;
- (ii) Legal counsel for a Party.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE AGREED THIS ____ DAY
OF AUGUST, 2016 TO ENTER INTO THIS AGREEMENT AS PER THE ATTACHED
PAGES AND TO FILE SAME WITH THE U.S. FEDERAL MARITIME COMMISSION.

COSCO CONTAINER LINES COMPANY, LIMITED

By: 
Name: Eric Jeffres
Title: Legal Counsel
Date: 8-15-16

HAMBURG SÜDAMERIKANISCHE DAMPFSCIFFFAHRTS-GESELLSCHAFT KG

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

COSCON/CSCL/HSD Slot Exchange Agreement
Asia – U.S. East Coast
FMC AGREEMENT NO. 012329-002
ORIGINAL Signature Page

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COSCO CONTAINER LINES COMPANY, LIMITED

By: _____

Name:

Title:

Date:

HAMBURG SÜDAMERIKANISCHE DAMPFSCIFFFAHRTS-GESELLSCHAFT KG

By: _____

Name:

Title:

Date:

Frank Smet

Member of the Executive Board

August 15, 2016

By: _____

Name:

Title:

Date:

ppa. P. A. J.

Philippe Krasing
Global Head of Network

15/8/16